

CHAPTER 32. IMPACT FEE.

32.01.010. Definitions.

A. "Capital Facilities Plan" means the capital facilities plans adopted by ordinance of the City Council ~~dated June 18, 1998~~ *September 2004*, as the same shall be amended from time to time.

B. "City" means Brigham City, a Utah municipal corporation.

C. "Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property.

D. "Development Activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

E. "Development Approval" means any written authorization from the City that authorizes the commencement of development activity.

~~F. "Equivalent Dwelling Unit (EDU)" means a typical single family dwelling unit with a 3/4" water meter providing 24 gallons per minute as defined on page 65 of the study referred to in 31.02.C of this document or a water distribution table as outlined in the current state adopted plumbing code. This will hereafter be referred to as an ERU.~~

~~G. "Equivalent Residential Unit (ERU)" means a typical single family dwelling with 24 fixture units of sewage waste as defined on page 24 of the study referred to in 31.01.02.D of this document or the drainage fixture unit table as outlined in the current state adopted plumbing code.~~

F. "ERU" or "Equivalent Residential Unit" means a unit of measure that defines development activity equivalent demand on public facilities equal to one average residential unit. Table B utilizes ERU equivalent for culinary water and sewer impact fee calculation.

H. "Impact Fee" means a payment of money imposed upon development activity as a condition of development approval. Impact fees do not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee or bond for project improvements, or other reasonable permit or application fees.

I. "Low Income Housing" means housing that is affordable by households earning less than ~~80%~~ *50%* of area median income as adjusted for household size utilizing HUD Home program income limits.

J. "Mobile Home" means a detached single-family dwelling unit, designed or intended for human habitation which is to be located in Brigham City within a Mobile Home Park or Mobile Home¹ Subdivision, and designed for long-term occupancy, and to be transported on its own wheels or on flatbed or other trailers or detachable wheels; containing a flush toilet, sleeping accommodations, a tub or a shower bath, kitchen facilities, and plumbing and electrical connections provided for except for connections to utilities and other minor work. Mobile Home shall also mean any detached single-family dwelling not meeting the requirements of Title 29.075 of the Brigham City Zoning Ordinance.

~~K. "Multiple Family Residential" means buildings arranged or designed to be occupied by more than two (2) families, the structure or dwelling group having more than (2) dwelling units. As used herein, multiple family residential shall include three-family dwellings, four-family dwellings, multiple family dwellings, and dwelling groups of more than two dwellings, as defined in the Brigham City Zoning Ordinance.~~

K. "Multiple Family Residential" means buildings arranged or designed to be occupied by two (2) or more families, the structure or dwelling group having two (2) or more dwelling units. As used herein, multiple family residential shall include two-family dwellings, three-family dwellings, four-family dwellings, multiple family dwellings, and dwelling groups of two (2) or more dwellings, as defined in the Brigham City Zoning Ordinance.

L. "Project Improvements" means site improvements and facilities that are:

1. Planned and designed to provide services for development resulting from a development activity; and

2. necessary for the use and convenience of the occupants or users of development resulting from a development activity.

M. "Service Area" means the geographic area designated by the City in which a defined set of public facilities provides service.

N. "Single Family Dwelling" means a building arranged or designed to be occupied by one family, the structure having one dwelling unit.

¹Ordinance No. 99-31, 12/18/99

~~Ø. "Two Family Dwelling" means a building or dwelling group arranged or designed to be occupied by two families, the structure or structures having only two dwelling units.~~

32.01.020. Findings and Purpose.

The City Council hereby finds and determines:

A. There is a need for public facilities for new development which have not been constructed and are required to be consistent with the City's General Plan and to protect the public's health, safety, and welfare.

B. The rapid and continuing growth of Brigham City necessitates the imposition and collection of impact fees pursuant to law that require development to pay its fair share of the cost of providing public facilities occasioned by the demands and needs of the development project at service levels necessary to promote and preserve the public health, safety, and welfare.

~~C. The City Council hereby adopts the report from Management Services Institute dated June 1997, entitled "Development Impact Fee Calculation for Brigham City Corporation" which establishes the costs for providing public facilities, including storm drainage, culinary water distribution, parks and open space, and municipal power facilities, occasioned by development projects within the City.~~

C. The City Council hereby adopts the report from Wikstrom Economic and Planning Consultants dated September 2004, entitled "Impact Fee Study Version 6" which establishes the costs for providing public facilities, including parks and open space, culinary water, wastewater, electric, and storm drain facilities, occasioned by development projects within the City.

~~D. The City Council hereby adopts the report from Jones and Associates Consulting Engineers dated March 1997, entitled Sanitary Sewer Master Plan and Impact Fee Study, which establishes the costs for providing sanitary sewer facilities occasioned by development projects within the City.~~

E.D. The impact fees established by this ordinance are based upon the costs which are generated through the need for new facilities and other capital acquisition costs required, incrementally, by new development within the City.

E. The impact fees established by this ordinance do not exceed the reasonable cost of providing public facilities occasioned by development projects within the City.

32.01.030. Service Area Established.

~~The corporate limits of Brigham City shall constitute the service area for calculation and imposition of impact fees.~~

The service area for calculation and imposition of impact fees by Brigham City shall be as follows:

A. The corporation limits of Brigham City; or

B. Areas outside of the corporate limits of Brigham City, where Brigham City is requested to provide services through appropriate agreements.

32.01.040. Impact Fees Levied.

For the Brigham City Service Area, the impact fees for this Service Area are contained in Table A attached hereto and by this reference made a part hereof.

32.01.050. Time of Collection.

Unless otherwise provided by the City Council, impact fees shall be payable prior to the issuance of a building permit by the City²

32.01.060. Use of Fees.

The fees shall be used solely to:

A. Pay for the described public facilities to be constructed by the City;

B. For reimbursing the City for the development's share of those capital improvements already constructed by the City; or

C. To reimburse developers who have constructed public facilities where those facilities were beyond that needed to mitigate the impact of the developer's project(s).

²Ordinance 99-01, 1/14/99

32.01.070. Adjustments.

The City may, upon a proper showing, adjust the standard impact fee at the time the fee is charged to:

- A. Respond to unusual circumstances in specific cases; and
- B. Ensure that the impact fees are imposed fairly; and
- C. Adjust the amount of the fee based upon studies and data submitted by the developer which are approved by the City after review of the same; and

D. Allow credits as approved by the City for dedication of land for, improvement to, or new construction of, public facilities providing services to the community at large, provided such facilities are identified in the capital facilities plan and are required by the City as a condition of approving the development activity. No credit shall be given for project improvements as defined herein.

~~E. Exempt development activities upon a finding by the City Council that such activities will provide low income housing or will otherwise serve a broad public purpose, and upon the establishment of one or more sources of funds other than impact fees to pay for that development activity.~~

E. At the discretion of the City Council, and considering budgetary constraints, exempt development activities, upon a finding by the City Council that such activities will provide low income housing or will otherwise serve a broad public purpose, and upon the establishment of one or more sources of funds other than impact fees to pay for that development activity. In applying the provisions of this paragraph, the City Council shall apply the following standards:

- 1. Exemptions provided under this paragraph shall be by resolution of the City Council.*
- 2. For development activities requesting exemption as serving a broad public purpose, the City Council shall find that such activities will provide benefits to the citizens of Brigham City at large and will accomplish a defined purpose or goal of the Brigham City General Plan that would otherwise require the expenditure of City funds to accomplish. If the City Council is unable to make such a finding, no exemption shall be provided.*
- 3. The City Council shall consider requests for exemption of development activities due to the provision of low income housing only under the following circumstances:*
 - a. the developer is a bona fide non-profit organization which has the provision of low income housing as a principal objective;*
 - b. the developer has established procedures that will ensure that the dwelling or dwellings for which the exemption is requested will remain affordable to low income households for a period of not less than thirty (30) years;*
 - c. the developer has established procedures that will guarantee the long term maintenance and upkeep of the low income housing development, including all structures, landscaping and other site features; and*
 - d. the project meets Planning Commission and City Council requirements for quality in site planning and architecture.*

F. Requests for adjustment or waiver of impact fees must be requested in writing by the developer. Evidence must be provided that supports the request, and compiled in a standard form as it relates to Equivalent Residential Units as defined herein.

G. Requests for adjustment or waiver of impact fees shall be reviewed by the Impact Fee Adjustment Committee ("the committee"), which shall be comprised of three (3) members, which shall be the Superintendent of Community Development, the Planning and Economic Development Coordinator, and the City Engineer. The Director of Public Works, the Director of Public Power, the Director of Parks and Recreation shall act as alternate members in the event that one of the committee members is unable to attend.

H. If the request for adjustment or waiver is the result of land dedication, or improvement of new public services or buildings, then a fair market appraisal shall be made of the proposal and shall be submitted, with any other evidence, to the committee for review. The appraisal shall be at the expense of the developer. Land dedication must first be approved by the City Council.

I. All requests for adjustment or waiver shall be submitted to the Community Development Department, which shall forward the request to the committee. The committee shall convene as needed to review all requests.

J. All submitted requests shall be reviewed by the committee within 14 days from the date the information was received and all decisions of the committee shall be submitted in writing to the developer within 30 days following the committee meeting.

K. The committee is authorized to approve or deny requests for adjustment of impact fees. In such cases, the committee's decision may be appealed to the City Council.

L. The committee shall make a recommendation to the City Council regarding requests for a waiver of impact fees.

M. Minutes of the committee meetings will be submitted to the City Council.

32.01.080. Accounting, Expenditure and Refund.

The City shall account for, expend, and refund impact fees in accordance with the provisions of the Act.

32.01.090. Impact Fee Challenges and Appeals.

A. Any person or entity residing in or owning property within a service area, and any organization, association, or corporation representing the interests of persons or entities owning property within a service area, may file a declaratory judgment action challenging the validity of the fee.

B. Any person or entity required to pay an impact fee imposed by the City who believes the fee does not meet the requirements of law may file a written request for information with the City as provided by law.

C. Within two weeks of the receipt of the request for information, the City shall provide the person or entity with the written analysis required by the Act and with any other relevant information relating to the impact fee.

D. Within 30 days after paying an impact fee, any person or entity who has paid the fee and wishes to challenge the fee shall:

1. File a written appeal with the Brigham City Council by delivering a copy of such appeal to the Brigham City Administrator setting forth in detail all grounds for the appeal and all facts relied upon by the appealing party with respect to the fees appealed. Upon receipt of appeal, the City Council shall thereafter schedule a public hearing on the appeal at which time all interested persons will be given an opportunity to be heard. The City Council shall schedule the appeal hearing and thereafter render its decision on the appeal no later than thirty (30) days after the challenge to the impact fee is filed. Any person or entity who has failed to comply with the administrative appeal remedies established by this section may not file or join an action challenging the validity of any impact fee.

2. Within ninety (90) days of a decision upholding an impact fee by the City or within 120 days after the date the challenge to the impact fee was filed, whichever is earlier, any party to the appeal that is adversely affected by the City Council's decision may petition the First Judicial District Court in and for Box Elder County for review of the decision.

3. In the event of a petition to the First Judicial District Court, the City shall transmit to the reviewing Court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

4. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of Subsection 3 above.

5. If there is a record:

- a. The District Court's review is limited to the recording provided by the City; and

- b. The District Court may not accept or consider any evidence outside the City's record unless that evidence was offered to the City and the Court determines that it was improperly excluded by the City.

6. If there is an inadequate record, the District Court may call witnesses and take evidence.

7. The District Court shall affirm the decision of the City if the decision is supported by substantial evidence in the record.

8. The judge may award reasonable attorneys' fees and costs to the prevailing party in any action brought under this section.^{3,4}

³ Entire Chapter adopted by Ordinance No. 98-30, 6/18/98

⁴ Numerous changes throughout Chapter by Ordinance No. 04-33, 12/2/04.

TABLE A

<i>Summary of Gross Impact Fee</i>		
Category	Development Classification	Impact Fee
Parks & Open Space *	Residential -	\$2,529 per single-family dwelling unit \$2,098 per multiple-family dwelling unit
Culinary Water *	Residential (single-family) - Residential (multiple-family) - Non-Residential -	\$2,276 per equivalent residential unit** \$1,888 per equivalent residential unit** (or use non-residential calculation) \$71.80 per fixture unit as established in Table B
Wastewater Treatment*	Residential (single-family) - Residential (multiple-family) - Non-Residential -	\$853 per equivalent residential unit** \$708 per equivalent residential unit** (or use non-residential calculation) \$36.00 per fixture unit as established in Table B
Electrical	Residential (single-family) - Residential (multiple-family) - Non-Residential -	\$147 per dwelling \$147 per meter \$46.69 per kilowatt-hour (varies by service size)
Storm Drainage	Residential - Non-Residential -	\$1,201 per single-family dwelling unit \$1,440 per multiple-family dwelling unit (or use non-residential calculation) \$0.40 per square foot of impervious surface

*The impact fees represented for these categories are subject to credit attributable to future bond payments varying annually.

** ERU definitions for each facility category are found in the report entitled "Impact Fee Study" prepared by Wikstrom Economic and Planning Consultants.

TABLE B

Brigham City Corporation Water-Sewer Impact Fee Commercial Project Calculation Table	
Fixture Supply Outlet Serving ⁵	Flow Rate (gpm) ⁶
Bathtub (with or without shower above)	4
Bidet	2
Clothes washer	4
Combination fixture/mop sink	4
Dishwasher, commercial	2.75
Drinking fountain	0.75
Lavatory	2
Shower (separate from bathtub)	3
Sillcock, hose bibb	5
Sink, residential (with dishwasher)	2.5
Sink, service	3
Urinal	1
Water closet	1.6
Floor sinks/drains (non-emergency)	2

⁵ Plumbing fixtures that do not conform to this table shall be calculated at the actual gpm use of

⁶ Water ERU based on 31.7 gpm. Sewer ERU based on 23.7 gpm. Gallons per minute flow rates based on 2003 International Plumbing Code, Table 604.3.

		Storm	Water	Parks	Electric	Sewer	TOTAL
Single Family Dwelling	Per Unit	\$176.52	\$1,521.71	\$1,763.48	\$136.97	\$840.96	\$4,439.64
Two Family Dwelling/ Condominium	Per Unit	\$139.03	\$1,520.21	\$1,322.05	\$120.27	\$840.96	\$3,942.57
Multiple Family Residential	Per Unit	\$171.04	\$998.46	\$1,153.67	\$89.81	\$546.62	\$2,959.60
Mobile Home	Per Unit	\$171.24	\$994.36	\$1,251.38	\$103.13	\$546.62	\$3,066.73

Storm Drain Fees (per sq. ft. of developed site)

Commercial _____ \$0.048

Industrial _____ 0.048

Institutional _____ 0.030

Other (Airport) _____ 0.030

Electrical Fees (per sq. ft. of developed site)

Commercial _____ \$0.0300

Industrial _____ 0.0930

Institutional _____ 0.0043

Other (Airport) _____ 0.0020

Sewer Fees

For all buildings other than residential units, fees shall be established by calculating the plans fixture units from table 709.1 of the current International Plumbing Code and dividing by 24 to arrive at the equivalent ERUs for the building and then multiplying the total by \$840.96.

(24 fixture units per table 709.1 of current International Plumbing Code = 1 ERU* = \$840.96)

Water Fees

All buildings other than residential units shall be calculated by computing the fixture unit value in gpm and dividing by 24 to arrive at the equivalent ERUs for the building, then multiply the ERU value by \$1,520.21.

3/4" meter = 1 ERU* = \$1520.21

*ERU standards for one Equivalent Residential Unit or Equivalent Dwelling Unit as noted in the definitions.

Development Impact Fee Calculation Report Amended from Table 3.2 and 3.4 of 1998 MSI study Storm Drainage System		
Proposed Land Use	Cost Impact Per Acre	Cost Impact Per DU or Sq. Ft. of Developed Site
Residential Single Family	\$ 752.00	\$176.52
Duplex and Condominium	1,052.50	139.03
Multiple Family	1,503.50	171.04
Mobile Homes	1,503.50	171.24
Commercial	2,105.00	0.0480
Industrial	2,105.00	0.0480
Institutional	1,315.63	0.0300
Other (Airport)	1,315.63	0.0300

Fees and cost impact per acre were derived from the median costs of Schedule 3.2 and 3.4 of the 1998 MSI report as adopted by Brigham City Council on June 18, 1998, Ordinance 98-30, Exhibit A.

Development Impact Fee Calculation Report Amended from Table 4.2 and 4.4 of 1998 MSI study Water System Improvements		
Proposed Land Use	Cost Impact Per Acre	Cost Impact Per DU or Sq. Ft. of Developed Site
Residential Single Family	\$ 6,482.50	\$1,521.71
Duplex and Condominium	11,506.50	1,520.01
Multiple Family	8,776.50	998.46
Mobile Homes	8,730.50	994.36
Commercial	*	*
Industrial	*	*
Institutional	*	*
Other (Airport)	*	*

Fees and cost impact per acre were derived from the median costs of Schedule 4.2 and 4.4 of the 1998 MSI report as adopted by Brigham City Council on June 18, 1998, Ordinance 98-30, Exhibit A.

* Commercial, industrial, institutional and other fees are based on the "Alternative Impact Fee Methodologies" as outlined in the 1998 MSI report, (Equivalent Dwelling Unit) page 65.

Development Impact Fee Calculation Report Amended from Table 6.2 and 6.4 of 1998 MSI study Municipal Power System		
Proposed Land Use	Cost Impact Per Acre	Cost Impact Per DU or Sq. Ft. of Developed Site
Residential Single Family	\$ 583.50	\$136.97
Duplex and Condominium	910.50	120.27
Multiple Family	789.50	89.81
Mobile Homes	905.50	103.13
Commercial	1,293.00	0.0300
Industrial	4,063.50	0.0930
Institutional	492.11	0.0110
Other (Airport)	192.60	0.0044

Fees and cost impact per acre were derived from the median costs of Schedule 6.2 and 6.4 of the 1998 MSI report as adopted by Brigham City Council on June 18, 1998, Ordinance 98-30, Exhibit A.

Sanitary Sewer Impact Fee Calculation Table Amended Cost	
Proposed Land Use	Impact Fee
Single Family Dwelling	\$840.96
Duplex/Condominium	840.96
Multiple Family Residential	546.62
Mobile Home	546.62

Commercial, industrial, institutional and other fees will be calculated using the ERU factor as outlined on page 7 of the Sanitary Sewer Master Plan and Impact Fee Study, March 1997 Jones and Assoc. as adopted by Brigham City Council on June 18, 1998, Ordinance 98-30, Exhibit A.